

# Lack of invoice does not deprive of right to deduct VAT

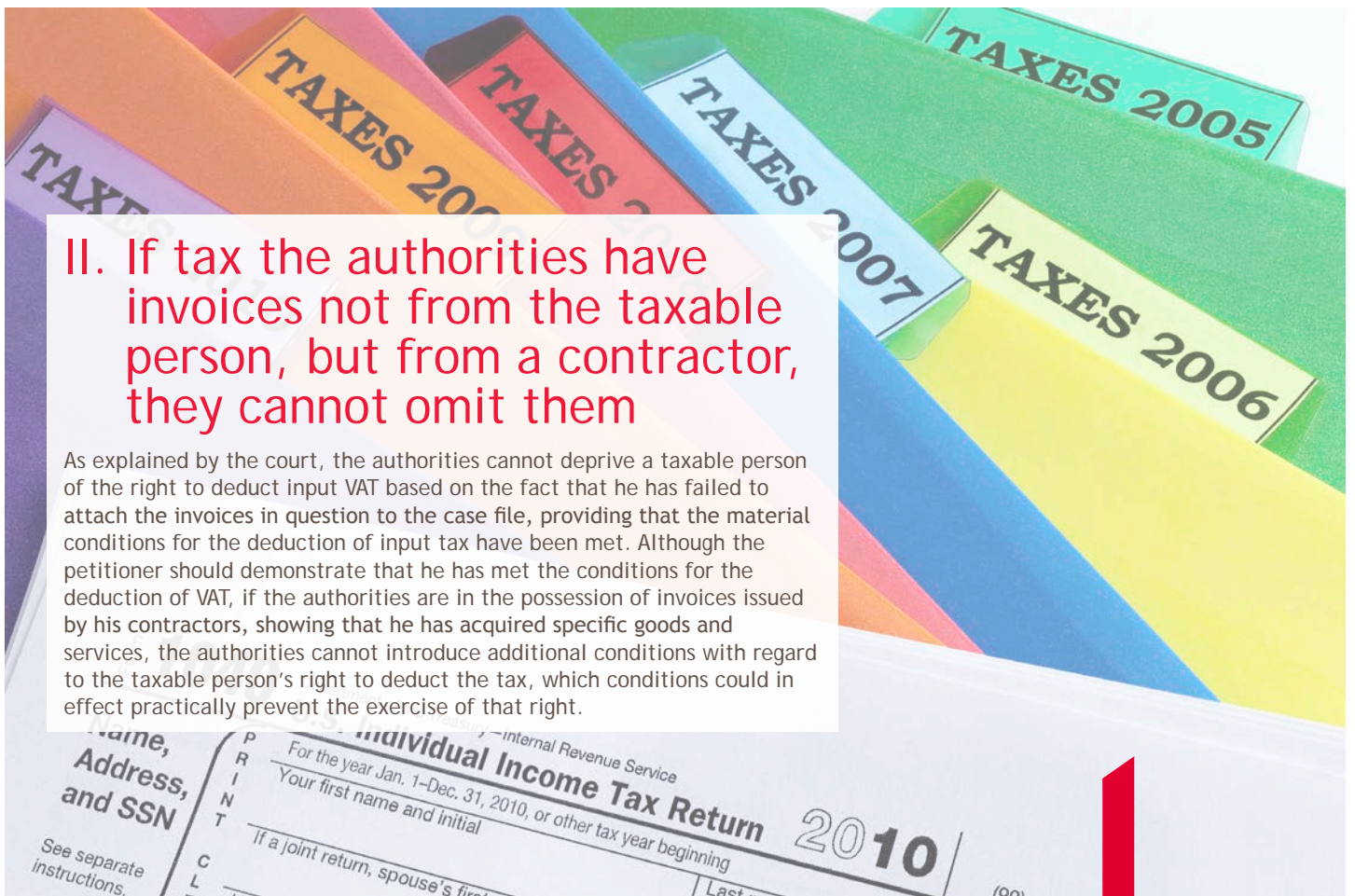
## I. Lack of invoice underlying VAT deduction does not take away eligibility to deduct

The Voivodship Administrative Court in Bydgoszcz has published the reasons for its ruling of 5 May 2021 (case file I SA/Bd 44/21), in which it had found that the tax authorities cannot deprive a taxable person of the right to deduct input VAT based on the fact that he failed to present invoices. Material conditions of deduction must, however, be met. If we are not dealing with an attempt at fraud or violation, and the relevant transactions have taken place, then the taxable is eligible to deduct input VAT. In the court's opinion, this interpretation is supported by the VAT neutrality principle.

If it is not an attempt at fraud or violation, and transactions have indeed taken place, a taxable person has a right to deduct input VAT even without presenting an invoice – the Voivodship Administrative Court in Bydgoszcz has ruled.

## II. If tax the authorities have invoices not from the taxable person, but from a contractor, they cannot omit them

As explained by the court, the authorities cannot deprive a taxable person of the right to deduct input VAT based on the fact that he has failed to attach the invoices in question to the case file, providing that the material conditions for the deduction of input tax have been met. Although the petitioner should demonstrate that he has met the conditions for the deduction of VAT, if the authorities are in the possession of invoices issued by his contractors, showing that he has acquired specific goods and services, the authorities cannot introduce additional conditions with regard to the taxable person's right to deduct the tax, which conditions could in effect practically prevent the exercise of that right.



### III. Tax authorities asserted that having invoices was a condition for deducting VAT

From the description of the case, it appears that while calculating the petitioner's VAT the Director of the Tax Administration Chamber omitted 32 invoices obtained from the petitioner's contractors, which the petitioner had not attached to the case file. The reason for taking away the petitioner's eligibility for the deduction of input VAT arising out of those invoices was the fact that he had failed to demonstrate that he had those invoices in the year to which the tax declaration pertained. To justify its standpoint, the tax authorities cited Article 86 of the VAT Act. Under its provisions, insofar as goods and services are used to perform taxable activities, the taxable person is eligible to reduce the amount of output tax by the amount of input tax. As a rule, input tax is the total of the amounts of tax resulting from the invoices received by the taxable person for the acquisition of goods and services. The tax authorities used these provisions to draw a conclusion that of key importance is the possession of VAT invoices that document the acquisition of goods and services associated with the performance of taxable activities.

### IV. According to the court the principle of VAT neutrality for the business takes precedence

The court disagreed with these arguments. It stressed that the said provisions cannot be interpreted separately from the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and from their interpretations issued by the Court of Justice of the European Union. The court noted that the system of deductions is meant to completely free businesses from the burden of output VAT or VAT paid as part of the businesses' entire business operations. Thus, the common VAT system ensures total neutrality of tax charges on business operations, irrespective of the objective or outcome of those operations, on the condition that the operations themselves are as a rule subject to taxation with VAT.





## V. What counts is whether the taxable person is taxable with VAT and whether purchases relate to business operations

The court emphasized that material and formal conditions specified in Article 168 letter a and Article 178 letter a of Council Directive 2006/112/EC must be met to be able to deduct VAT. With regard to the material conditions that must be met for the eligibility to deduct to be present, the directive states that to use this right, the entity must first be a taxable person as defined in the directive, and secondly - the goods and services underlying that right must be used by the taxable person at a later stage of trade for the purpose of his own taxable transactions, and the said goods and services should be supplied by another taxable person at an earlier stage of trade.



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## VI. Conditions for deduction, rather than formal requirements, must be met

When it comes to formal conditions, according to the rulings issued by the CJEU, the principle of neutrality requires that the eligibility to deduct input VAT be granted when the basic requirements are met, even if the taxable persons have failed to meet some of the formal conditions. In consequence, if the tax authorities have the information necessary to determine that material conditions have been met, they cannot introduce additional conditions with regard to the taxable person's right to deduct the tax, which conditions could in effect practically prevent the exercise of that right.

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